

TRIBAL COURT
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

John Kawegoma,

Plaintiff,

Case No. C-061-0805

v.

*Decision on Plaintiff's Prayer
For Declaratory Judgment*

Little Traverse Bay Bands of Odawa Indians
Election Board,

Defendant.

**DECISION ON PLAINTIFF'S PRAYER
FOR DECLARATORY JUDGMENT**

This matter comes to the Court on Plaintiff's *Complaint* seeking a declaratory judgment against the Tribal Election Board. Oral arguments on the *Complaint* were held on September 02, 2005.

At the outset, Plaintiff made it clear that he was not challenging the **outcome** of the August 08, 2005 General Election. That election was conducted to elect the members of the first Tribal Council under the Tribe's new *Tribal Constitution*. Rather, Plaintiff complained that the election **process** was unconstitutional and he asked the Court for a declaratory judgment **as to the conduct of future elections**.

PRAYER FOR DECLARATORY JUDGMENT

Plaintiff argues that there were three (3) violations of the *Tribal Constitution*. Each alleged violation will be addressed in turn:

(1) Plaintiff argues that the manner of mailing make mailing delays possible. He assumed that the Election Board used a "clearinghouse process" to mail the ballots to tribal members. Plaintiff apprised the Court of his experience working for a mailing clearinghouse. That experience lead him to believe that mailing delays are inevitable. Thus, he apprised the Court of the need to put safeguards in the *Elections Statute* by mandating a longer mailing time frame than the one used by the Election Board.

Defendant Election Board argues that it fully complied with the minimum thirty (30) day requirement of Article XII (D)(3) of the *Tribal Constitution*. The ballots were mailed to tribal members by *Ink Impressions, Inc.*, an elections consultant, on July 08, 2005. The election was held on August 08, 2005, thirty-one (31) days after the ballots were mailed. Thus, Defendant argues that the process fully complied with the *Tribal Constitution*. Defendant further argues that amendments of tribal statutes is within the providence of the Tribe's legislative body. Concerns that the process does not provide enough cushion for mailing delays must be taken up before that body.

Article XII (D)(3) of the *Tribal Constitution* requires "[B]allots must be mailed at least thirty (30) days prior to an election...". It is clear as evidenced by the *United States Postal Service Postage Statement - First-Class Mail Permit Imprint* that the ballots were mailed at least thirty (30) days prior to the General Election. Thus, there can be no doubt that the mailing met the requirements of the *Tribal Constitution*. This Court agrees with the Defendant that recommendations for amendment of tribal statutes must be taken to the Tribal Council. Clearly, this Court is without any authority to impose upon the legislative function.

(2) Plaintiff alleges that the constitutional guarantee of equal protection was violated because the Election Board Chairperson made a public "announcement" at the

Candidates' Forum on July 23, 2005 which extended an offer that other tribal members did not receive. That offer was to send a replacement ballot to those who did not receive a ballot in the mail. Plaintiff alleges that the offer was made through a public "announcement" because several members had contacted the Board because they did not receive their ballots through the mail. Plaintiff rhetorically asks how many others did not receive their ballots?

Defendant Election Board argues that there is no violation of the equal protection guarantee of the Tribal Constitution. All tribal members had the same opportunity to receive a second (replacement) ballot if they failed to receive their ballot in the mail. There was no violation of equal protection simply because the Chairperson of the Election Board informed those, assembled at the public forum, that those who did not receive their election ballot in the mail could contact the Board for a replacement ballot. The Election Board was only doing the prudent thing by getting ballots to those who wanted to vote.

In its defense, Defendant Election Board presented ample evidence of multiple notices to tribal members about the election and its schedule. The Board asserts that anyone who did not receive a ballot had the same opportunity to receive a replacement ballot. The so-called "announcement" at the public forum was a prudent of-the-moment announcement that was merely supplemental to all other notice that existed. Election information and the election schedule was continually posted on the internet in the *Odawa Register*; published in the March tribal newsletter; mailed to tribal members in the April *Call To Election*; mailed to tribal members, along with the *Candidates' Statements*; mailed with the Primary Election ballots; and available for tribal members at the *Candidates' Forum*. It is clear that anyone interested in voting would have known how to get information about the election schedule and how and when to make an inquiry about

getting their ballot to vote. In fact, Defendant Election Board submitted testimony to the Court that as many as nineteen other tribal members who were not at the forum did exactly that. They contacted the Election Board to get a replacement ballot. Defendant Election Board also testified that about forty (40) percent of tribal members voted in the election, making it the election with the highest voter participation, thus far.

It is clear from the evidence submitted to this Court that there was no violation of the equal protection guarantee of the Tribal Constitution. The offer at the forum to send a replacement ballot to those who had not received their ballot was merely a conscious effort to ensure that everyone who wanted to vote had that opportunity.

(3) Plaintiff argues that the *Tribal Constitution* requires a voter registration process and resultant list for future elections and Tribal Membership Meetings. Plaintiff argues that there was no such list for the election just conducted. Thus, the election process was unconstitutional.

Defendant Election Board testified that, as for Plaintiff's request for judgment as to future elections, the Board has already begun the work of developing a voter registration process. The Board further testified that the process will be complete in time for a voter registration list to be available by the time of the first Tribal Membership Meeting.

As for the election just conducted, Defendant Election Board argues that the Tribal Council provided by legislative enactment that the *Tribal Membership Directory* be the *Voter Registration List* for this election. Defendant Election Board testified that Tribal Council was concerned about the confusion that would invariably result among voters by having a second voter registration requirement on the immediate heels of a similar kind of requirement to vote in the Secretary of Interior's election to adopt the

Tribal Constitution. Tribal Council was concerned that many tribal members would be confused by the second registration requirement and thus would become disenfranchised. Tribal Council, as the duly-elected representatives of the Tribe, understandably wanted to avoid that kind of result and decided that the best strategy to avoid confusion was to legislatively provide, for this election, that the voter registration list be all tribal members eighteen years of age or older. The Tribal Directory, a listing of all tribal members eighteen years of age or older, was made available to tribal members and candidates running for office for a nominal fee. In fact, several candidates did ask the Election Board for a list of tribal voters and were informed how to obtain a copy of the Tribal Directory.

It is clear that there was indeed a voter registration list for this immediate past election. It was the Tribal Directory.

**FOR ALL OF THE FOREGOING, THIS COURT DENIES
PLAINTIFF'S *PRAYER FOR DECLARATORY JUDGMENT*.**

10/03/05
DATED

Michael Petoskey
Tribal Judge